

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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RICHARD MILLS and DAVID P. HASKINS,

Plaintiffs,

v.

ORDER  
04-CV-005A

SENIOR CHIEF OFFICER LUPLOW, et al.,

Defendants.

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This prisoner civil rights case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1), on March 9, 2007. On December 27, 2007, plaintiff Richard Mills, who is proceeding *pro se*, filed a motion for summary judgment. On February 29, 2008, plaintiff Mills filed a motion to strike and to deem facts admitted. On March 25, 2008, plaintiff Mills filed motions for leave to file a supplemental complaint, for a preliminary and final injunction, and for an expedited hearing. On June 30, 2008, Magistrate Judge McCarthy filed a Report and Recommendation and Order, denying plaintiff Mills' motion for leave to file a supplemental complaint, and recommending denial of his motions for a preliminary and final injunction and for an expedited hearing. On July 1, 2008, Magistrate Judge McCarthy filed a Report and Recommendation and Order, granting in part and denying in part plaintiff Mills' motion to strike,

denying his motion to deem facts admitted, and recommending that his motion for summary judgment be denied.

On July 11, 2008, plaintiff Mills filed objections to the June 30, 2008 Report and Recommendation and Order. On July 14, 2008, plaintiff Mills filed objections to the July 1, 2008 Report and Recommendation and Order. Defendants filed responses to the objections on August 4, 2008. Plaintiff Mills filed a reply on August 11, 2008.

Pursuant to 28 U.S.C. § 636(b)(1)(A), the Court may reconsider a magistrate judge's order regarding a nondispositive pretrial matter only if such order is "clearly erroneous or contrary to law." Applying such a standard to this case, the Court finds that neither Magistrate Judge McCarthy's June 30, 2008 Order denying plaintiff's motion for leave to file a supplemental complaint, nor his July 1, 2008 Order denying in part plaintiff's motion to strike and denying plaintiff's motion to deem facts admitted is clearly erroneous or contrary to law.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon a *de novo* review of the June 30, 2008 Report and Recommendation and the July 1, 2008 Report and Recommendation, and after reviewing the submissions of the parties, the Court adopts the proposed findings of each of those Reports and Recommendations.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's June 30, 2008 Report and Recommendation, the Court denies plaintiff's motion for a preliminary and final injunction and his motion for an expedited hearing. In addition, for the reasons set forth in Magistrate Judge McCarthy's July 1, 2008 Report and Recommendation, the Court denies plaintiff's motion for summary judgment.

The case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

s/ Richard J. Arcara  
HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: September 8, 2008